

Applicants : CASARI et. al. Atty. Dkt. No. : 1069-PCT-US
USSN : 10/535,437 Art Unit : 1649
Filed : August 15, 2005 Date of office action: January 8, 2008
Examiner : Steven H. Standley Date of response : February 6, 2008
Page : 2

Election/Restriction Requirement

The Examiner to whom this application is assigned indicated that the application contains the following groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1. In accordance with 37 CRF 1.499, Applicants are required, in response to this action, to elect a single invention to which the claims must be restricted.

- I. Claims 1-2 and 10-11, drawn to a nucleic acid and a kit for diagnosis of migraines.
- II. Claims 3-9, drawn to a method of diagnosis by amplifying the DNA.
- III. Claim 12, drawn to an alpha 2 subunit protein of Na/K ATPase.
- IV. Claims 14-15, drawn to a method of identifying agonist or antagonist agents of the Na/K ATPase.

In response, Applicants respectfully traverse the above restriction.

According to PCT Rule 13.2,

"Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art."

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Page : 3

Applicants submit that claims 1-2 and 10-11 of invention Group I, and claims 3-9 of invention Group II do not require restriction as they are connected by a single relationship, a nucleic acid encoding a functional portion or the gene-regulating region of the alpha 2 subunit of the Na,K pump. The method of diagnosis by amplifying the DNA in claims 3-9 clearly depends on a special technical feature of the nucleic acid in claims 1-2 and 10-11.

Applicants submit that claim 12 of invention group III and claims 14-15 of invention group IV do not require restriction as they are connected by a single relationship, a functional subunit of the Na,K pump. The method of identifying an agonist or antagonist agent of a functional subunit of the Na,K pump clearly necessitates a special technical feature of the functional subunit itself as provided in claim 12.

Applicants further submit that the nucleic acid in invention Groups I and II encodes a functional subunit of the Na,K pump to which invention groups III and IV are directed. As such, invention groups I and II are connected by a single relationship to invention groups III and IV, and therefore do not require restriction.

In summary, invention Groups I-IV are all connected by a single relationship, namely, the various uses of a nucleic acid and the protein fragment that the nucleic acid encodes. Accordingly, Applicants request withdrawal of the restriction of claims 1-15.

Election of Invention

In the event that the above discussion does not convince the Examiner to withdraw the restriction requirement, Applicants hereby elect, with traverse, Group IV, consisting of claims 14-15, drawn to a method of identifying agonist or antagonist agents of the

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Page : 4

Na/K ATPase. Election is made without any intention to abandon the subject matter of the non-elected claims.

If a telephone interview would be of assistance in advancing the prosecution of the subject application, Applicants' undersigned attorney invites the Examiner to telephone him at the number provided below. No fee is deemed necessary in connection with the filing of this Response. However, if any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 50-1891.

Respectfully submitted,

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